ARGUMENT

OF

CHARLES SUMNER, ESQ.

AGAINST THE

CONSTITUTIONALITY OF SEPARATE COLORED SCHOOLS,

IN THE CASE OF

SARAH C. ROBERTS *vs.* THE CITY OF BOSTON.

Before the Supreme Court of Mass., Dec 4, 1849.

BOSTON:
PUBLISHED BY B. F. ROBERTS,
1849.

PRINTED AT NO. 3 CORNHILL.

ARGUMENT.

May it please your Honors: —

Can any discrimination, on account of color or race, be made, under the Constitution and Laws of Massachusetts, among the children entitled to the benefit of our public schools? This is the question which the Court is now to hear, to consider, and to decide.

Or, stating the question with more detail, and with a more particular application to the facts of the present case, are the Committee, having the superintendence of the public schools of Boston, entrusted with the *power*, under the constitution and laws of Massachusetts, to exclude colored children from these schools, and to compel them to resort for their education to separate schools, set apart for colored children only, at distances from their homes less convenient than those open to white children?

This important question arises in an action by a colored child, only five years old, who, by her next friend, sues the city of Boston for damages, on account of a refusal to receive her into one of the public schools.

It would be difficult to imagine any case which could appeal more strongly to your best judgment, whether you regard the parties or the subject. On the one side is the city of Boston, strong in its wealth, in its influence, in its character; on the other side is a little child, of a degraded color, of humble parents, still within the period of natural infancy, but strong from her very weakness, and from the irrepressible sympathies of good men, which, by a divine compensation, come to succor the weak. This little child asks at your hands her *personal rights*. So doing, she calls upon you to decide a ques-

tion which concerns the personal rights of other colored children; which concerns the constitution and laws of the Commonwealth; which concerns that peculiar institution of New England, the common schools; which concerns the fundamental principles of human rights; which concerns the Christian character of this community. Such parties, and such interests, so grand and various, may justly challenge your most earnest attention.

Though this discussion is now for the first time brought before a judicial tribunal, it is no stranger to the public. For five years it has been an occasion of discord to the School Committee. No less than four different reports — two majority reports, and two minority reports — forming pamphlets of solid dimensions—devoted to this question, have been made to this Committee, and afterwards published. The opinions of learned counsel have been enlisted in the cause. The controversy, leaving these regular channels, has overflowed the newspaper press, and numerous articles have appeared, espousing opposite sides. At last it has reached this tribunal. It is in your power to cause it to subside for ever.

Forgetting many of the topics, and all of the heats which have heretofore mingled with the controversy, I shall strive to present the question in its juridical light, as becomes the habits of this tribunal. It is a question of jurisprudence on which you are to give judgment. But I cannot forget that the principles of morals and of natural justice lie at the foundation of all jurisprudence. Nor can any reference to these be inappropriate in a discussion before this Court.

The great principle which is involved in this case, I shall first exhibit in the Constitution of Massachusetts, next in the legislation, and then in the judicial decisions. I shall then consider the special circumstances of this case, and show the violation of the Constitution and laws, by the School Committee of Boston, answering, before I close, some of the grounds on which their conduct has been vindicated.

I. I begin with the principle, that, according to the spirit of American institutions, and especially of the Constitution of Massachusetts, *all men, without distinction of color or race, are equal before the law.*

I might, perhaps, leave this proposition without one word of comment. The equality of men will not be directly denied on this occasion, and yet it has been so often assailed of late, that I trust I shall

not seem to occupy your time superfluously in endeavoring to show what is understood by this term, when used in laws, or constitutions, or other political instruments. Mr. Calhoun, in the Senate of the United States, and Lord Brougham, in his recent work on *Political Philosophy*, (Part 2. cap. 4.) have characterized equality as impossible and absurd. If they had chosen to comprehend the true extent and application of the term, as employed on such occasions, something, if not all of the force of their objections, would have been removed. That we may better appreciate its character and its limitations, let me develop with some care the origin and growth of this sentiment, until it finally ripened into a formula of civil and political right.

The *sentiment* of equality among men was early cherished by generous souls. It showed itself in the dreams of ancient philosophy. It was declared by Seneca; when writing to a friend a letter of consolation on death, he said, *Prima enim pars Equitatis est Equalitas.* (Epist. 30.) The first part of Equity is Equality. But it was enunciated with persuasive force in the truths of the Christian religion. Here we learn that God is no respecter of persons; that he is the father of all; and that we are all his children, and brethren to each other. When the Saviour taught the Lord's prayer, he taught the sublime doctrine of the Brotherhood of mankind, enfolding the Equality of men.

Slowly did this sentiment enter the *State*. The whole constitution of government in modern times was inconsistent with it. An hereditary monarchy, an order of nobility, and the complex ranks of superiors and inferiors established by the feudal system, all declared, not the equality, but the inequality of men, and they all conspired to perpetuate this inequality. Every infant of royal blood, every noble, every vassal, was a present example, that, whatever might be the truths of religion, or the sentiments of the heart, men living under these institutions were not born equal.

The boldest political reformers of early times did not venture to proclaim this truth; nor did they truly perceive it. Cromwell beheaded his king, but caused the supreme power to be secured in hereditary succession to his eldest son. It was left to John Milton, in poetic vision, to be entranced —

> With fair Equality, fraternal state.

Sidney, who perished a martyr to liberal sentiments, drew his inspira-

tion from the classic, and not from the Christian fountains. The examples of Greece and Rome fed his soul. The Revolution of 1688, partly by force, and partly by the popular voice, brought a foreigner to the crown of Great Britain, and the establishment, according to the boast of loyal Englishmen, of the freedom of the land. But the Bill of Rights did not declare, nor did the genius of Somers or Maynard conceive the political axiom, that all men are born equal. It may find acceptance in our day from individuals in England, but it is disowned by English institutions.

It is to France that we must pass for the earliest development of this idea, for its amplest illustration, and for its most complete, accurate, and logical expression. In the middle of the last century appeared the renowned *Encyclopedie*, edited by D'Alembert and Diderot. This remarkable production, where science, religion and government were all discussed with a revolutionary freedom, contains an article on Equality, which was published in 1755. Here we find the boldest expression which had then been given to this sentiment. "Natural Equality," says the Encyclopedia, "is that which exists between all men by the constitution of their nature only. This Equality is the principle and the foundation of liberty. Natural or moral equality is then founded upon the constitution of human nature, common to all men, who are born, grow, subsist, and die in the same manner. Since human nature finds itself the same in all men, it is clear, that according to nature's law, each ought to esteem and treat the others as beings who are naturally equal to himself; that is to say, who are men as well as himself." It is then remarked, that political and civil slavery is in violation of this equality: and yet there is a recognition of the inequalities of nobility in the state. Alluding to these, it is simply said, that those who are most elevated above others, ought to treat their inferiors as beings naturally their equals, shunning all outrage, and demanding nothing beyond what is due, and demanding with humanity that which is most incontestably their due.

When we consider the period at which this article was written, we shall be astonished less at its incompleteness and vagueness, than by its bravery and generosity. The dissolute despotism of Louis XV. overshadowed France. Selfish nobles and fawning courtiers filled the royal antechambers. The councils of Government were controlled by royal mistresses. Only a few years before, in 1751, the

King had founded, in defiance of the principles of equality — but in entire harmony with the conduct of the School Committee in Boston — a military school, *for nobles only*, carrying into education the distinction of Caste. At such a period the Encyclopedia did well in uttering such important and effective truth. The *sentiment* of equality was here fully declared. Nor could it be expected at that early day that it should adequately perceive, or if it perceived, that it should dare to utter, our axiom of liberty, that all men are born equal in civil and political rights.

It is thus with the history of all moral and political ideas. First appearing merely as a sentiment, they animate those who receive them with a noble impulse, filling them with generous sympathies, and encouraging them to congenial efforts. Slowly recognized, they finally pass into a formula to be acted upon, to be applied, to be defended in the concerns of life.

Almost contemporaneously with this article in the Encyclopedia, our attention is arrested by a solitary person, poor, of humble extraction, born in Geneva, in Switzerland, of irregular education and life, a wanderer from his birth-place, enjoying a temporary home in France, — a man of audacious genius, who set at nought the received opinions of mankind, Jean Jacques Rousseau. His earliest appearance before the public, was by an eccentric *Essay on the Origin of Inequality among Men*, in which he sustained the irrational paradox, that men are happier in a state of nature than under the laws of civilization. This was followed by a later work, the *Contrat Social*. In both of these productions, the sentiment of Equality was invoked against many of the abuses of society, and language was employed going far beyond equality in civil and political rights. The conspicuous position that has been awarded to the speculations of Rousseau, and the influence which they have exerted in diffusing this sentiment, make it proper to refer to them on this occason; but the absence of precision in his propositions renders him an uncertain guide.

The French Revolution was now at hand. This great movement for enfranchisement was the expression of this sentiment. Here it received a distinct and authoritative enunciation. In the constitutions of government which were successively adopted, amidst the throes of bloody struggles, the equality of men was constantly proclaimed. King, nobles, and all distinctions of birth, passed away before this mighty and triumphant truth.

Look at these Constitutions, and see at once the grandeur of the principle, and the manner in which it was explained and illustrated. The Constitution of 1791 declares in its first article as follows: "Men are born and continue free and *equal in their rights.*" In its sixth article it says: "The law is the expression of the general will. It ought to be the same for all, whether it protects or punishes. *All citizens being equal in its eyes, are equally admissible to all dignities, places, and public employments, according to their capacity, and without other distinction than their virtues and talents.*" At the close of the Declaration of Rights there is this further explanation of it: "The National Assembly, wishing to establish the French Constitution on principles which it has just acknowledged and declared, *abolishes irrevocably the institutions which bounded liberty and equality of rights.* There is no longer, neither nobility, nor peerage, nor hereditary distinctions, nor distinction of order, nor feudal rule, nor patrimonial justices, nor any titles, denominations and prerogatives, which were thence derived, nor any order of chivalry, nor any corporations or decorations, for which proofs of nobility are required, or which supposed distinctions of birth, nor any other superiority than that of public functionaries in the discharge of their functions. * * * *There is no longer, for any part of the nation, nor for any individual, any privilege or exception to the law, common to all Frenchmen.*"— *Moniteur*, 1791, *No.* 259.

In fitful mood another Declaration of Rights was brought forward by Condorcet, Feb. 15, 1793. Here also are fresh inculcations of the equality of men. Article 1st, places Equality among the natural, civil and political rights of man. Article 7th declares: "*Equality consists in this, that each can enjoy the same rights.*" Article 8th: "*The law ought to be equal for all*, whether it recompense, or punish, or repress." Article 9th: "All citizens are admissible to all public places, employments, and functions. *Free people cannot know other motives of preference than talents and virtues.*" Article 23d: "Instruction is the need of all, and society owes it equally to all its members." Article 32d: "There is oppression when the law violates the natural, civil, and political rights which it ought to guarantee. There is oppression when a law is violated by public functionaries in its application to individual facts." — *Moniteur*, 1793, *No.* 49.

Next came the Constitution of June, 1793. This announces in its

second article, that the natural and imprescriptible rights of men are "*Equality*, liberty, safety, property." And in the next article it shows what is meant by Equality. It says, "All men are equal by nature, *and before the law*." (*Moniteur*, 1793, *No.* 178.) Here we first meet this form of definition. At a later day, after France had passed through an unprecedented series of political vicissitudes, in some of which the rights of Equality had been trampled under foot, when, at the revolution of 1830, Louis Philippe was called to a "throne surrounded by republican institutions," the charter which was then promulgated repeated this phrase. In its first article, it declared, that "Frenchmen are *equal before the law*, whatever may be their titles or ranks."

While recognizing this peculiar enunciation of the equality of men as more specific and satisfactory than the naked statement that all men are born equal, it is impossible not to be reminded that this form of speech finds its prototype in the ancient Greek language. In the history of Herodotus, we are told that "the government of the many has the most beautiful name of *isonomia*" — or *equality before the law*. (Book 3, § 80.) Thus this remarkable language, by its comprehensiveness and flexibility, in an age when equality before the law was practically unknown, nevertheless supplied a single word, which is not to be found in modern tongues, to express an idea which has been practically recognized only in modern times. Such a word in our own language, as a substitute for Equality, might have superseded some of the criticism to which this political doctrine has been exposed.

After this review, the way is now prepared to consider the nature of Equality, as secured by the Constitution of Massachussetts. The Declaration of Independence, which was put forth after the French Encyclopedia, and the political writings of Rousseau, places among self-evident truths this proposition, — "*that all men are created equal*, and that they are endowed by the Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." The Constitution of Massachussetts repeats the same idea in a different form. In the first article it says: "*All men are born free and equal*, and have certain natural, essential and unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties." The sixth section further explains the doctrine of Equality. It says: — "*No man, nor corporation, or*

association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, law-giver, or judge, is absurd and unnatural." The language here employed, in its natural signification, condemns every form of inequality, in civil and political institutions.

Though these declarations preceded, in point of time, the ampler declarations of France, they may, if necessary, be construed in the light of the latter. It is evident that they aim to declare substantially the same things. They are declarations of *Rights*, and the language employed, though general in its character, is obviously to be restrained to those matters which are within the design and sphere of a declaration of *Rights*. It is a childish sophism to adduce in argument against them the physical or mental inequalities by which men are characterized.

It is a palpable truth that men are not born equal in physical strength, or in mental capacities; in beauty of form or health of body. Diversity or inequality, in these respects, is the law of creation. From this difference springs divine harmony. But this inequality is in no particular inconsistent with a complete civil and political equality.

The equality which was declared by our fathers in 1776, and which was made the fundamental law of Massachussets in 1780, was *equality before the law*. Its object was to efface all political or civil distinctions, and to abolish all institutions founded upon *birth*. "All men are *created* equal," says the Declaration of Independence. "All men are *born* free and equal," says the Massachussets Bill of Rights. These are not vain words. Within the sphere of their influence no person can be *created*, no person can be *born*, with civil or political privileges, not enjoyed equally by all his fellow-citizens, nor can any institution be established recognizing any distinctions of birth. This is the Great Charter of every person who draws his vital breath upon this soil, whatever may be his condition, and whoever may be his parents. He may be poor, weak, humble, black — he may be of Caucasian, of Jewish, of Indian, or of Ethiopian race — he may be of French, of German, of English, of Irish extraction —

but before the Constitution of Massachussets all these distinctions disappear. He is not poor, or weak, or humble, or black — nor Caucasian, nor Jew, nor Indian, nor Ethiopian — nor French, nor German, nor English, nor Irish; he is a MAN, — the equal of all his fellow-men. He is one of the children of the State, which, like an impartial parent, regards all its offspring with an equal care. To some it may justly allot higher duties, according to their higher capacities, but it welcomes all to its equal, hospitable board. The State, imitating the divine justice, is no respecter of persons.

Here nobility cannot exist, because it is a privilege from birth. But the same anathema which smites and banishes nobility, must also smite and banish every form of discrimination founded on birth.

Quamvis ille niger, quamvis tu candidus esses.

II. I now pass to the second stage of this argument, and ask attention to this proposition. The legislature of Massachussets, in entire harmony with the Constitution, has made no discrimination of color or race, in the establishment of Public Schools.

If such discrimination were made by the laws, they would be unconstitutional and void. But the legislature of Massachussets has been too just and generous, too mindful of the Bill of Rights, to establish any such privilege of *birth*. The language of the statutes is general, and applies equally to all children, of whatever color or race.

The provisions of the law regulating this subject are entitled, *Of the Public Schools*. (Revised Statutes, chap. 23.) It is to these that we must look in order to ascertain what constitutes a Public School. None can be legally such which are not established in conformity with the law. They may, in point of fact, be more or less public: yet, if they do not come within the terms of the law, they do not form a part of the beautiful system of our public schools — they are not public schools.

It is important then to examine these terms. The first section provides that in "every town containing fifty families, or householders, there shall be kept in each year, at the charge of the town, by a teacher or teachers of competent ability and good morals, *one school* for the instruction of *children* in Orthography, Reading, Writing, English Grammar, Geography, Arithmetic and Good Behavior, for the term of six months, or two or more such schools for terms of time

that shall together be equivalent to six months." The 2d, 3d, and 4th sections provide for the number of *such* schools to be kept in other towns having more than five hundred inhabitants. The language here employed does not recognize any discrimination of color or race. Thus in every town, whether there be one or more schools, they are all to be "schools for the instruction of *children*" generally — not children of any particular class, or color, or race, but children, — meaning the children of the town where the schools are.

The 5th and 6th sections provide for the establishment, in certain cases, of a school, in which additional studies are to be pursued, "which shall be kept *for the benefit of all the inhabitants* of the town." Here the language not only does not recognize any discrimination among the children, but seems directly to exclude it.

In conformity with these sections is the peculiar phraseology of the memorable law of the Colonies in 1647, founding public schools, "to the end that learning be not buried in the graves of our forefathers." This law obliged towns having fifty families "forthwith to appoint one" within their limits "to teach *all such children as shall resort to him*, to write and read." (Ancient charters, 186.)

It is on this legislation that the public schools of Massachusetts have been reared. The clause of the Revised Statutes (chap. 23) and the statute (1838, chap. 154) appropriating small sums, in the nature of a contribution, out of the school fund for the support of common schools among the Indians, do not interfere with this system. These partake of the anomalous character of all the legislation with regard to the Indians in this Commonwealth. It does not appear, however, that any separate schools are established by law among the Indians, nor that the Indians are in any way excluded from the public schools in their neighborhood.

I conclude from this examination, that there is but one kind of public school established by the laws of Massachusetts. This is the general Public School, free to all the inhabitants. There is nothing in these laws establishing any exclusive or separate school for any particular class, whether rich or poor, whether Catholic or Protestant, whether white or black. In the eye of the law there is but *one class*, in which all interests, opinions, conditions and colors commingle in harmony — excluding none, comprehending all.

From the legislation of the Commonwealth, I pass to the adjudication of the Courts.

III. The Courts of Massachusetts have never recognized any discrimination, founded on color or race, in the administration of the Public Schools, but have recognized the equal rights of all the inhabitants.

There are a few decisions only of our Court bearing on this subject, but they all breathe one spirit. The sentiment of equality animates them. In the case of *Commonwealth* vs. *Davis*, 6 Mass. R. 146, while declaring the equal rights of all the inhabitants, both in the grammar and district schools, the Court said: "The schools required by the statute are to be maintained for the benefit of the whole town, *as it is the wise policy of the law to give all the inhabitants equal privileges for the education of their children in the public schools.* Nor is it in the power of the majority to deprive the minority of this *privilege.* * * * * Every inhabitant of the town has a right to participate in the benefits of both descriptions of schools, and it is not competent for a town to establish a grammar school for the benefit of one part of the town to the exclusion of the other, although the money raised for the support of schools may be in other respects fairly apportioned."

In the case of *Withington* vs. *Eveleth*, 7 Pick. 106, the Court said, they "were all satisfied that the power given to towns to determine and define the limits of school districts, can be executed only by a geographical division of the town for that purpose." A limitation of the district, which was merely *personal*, was held invalid. This same principle was again recognized in *Perry* vs. *Dove*, 12 Pick. R. 213, where the Court say, "Towns, in executing the power to form school districts, are bound so to do it as to include *every inhabitant* in some of the districts. They cannot lawfully omit any, and thus deprive them of *the benefits of our invaluable system of free schools.*"

The Constitution, the legislation, and the judicial decisions of Massachusetts, have now been passed in review. We have seen what is contemplated by the Equality secured by the Constitution. We have seen also what is contemplated by the system of Public Schools, as established by the laws of the Commonwealth, and illustrated by the decisions of the Supreme Court. The way is now prepared to consider the peculiarities in the present case, and to apply the principle which we have thus recognized in the Constitution, in the laws and judicial decisions.

IV. The exclusion of colored children from the Public Schools, open to white children, is a source of practical inconvenience to them and their parents, to which white persons are not exposed, and is, therefore, a violation of Equality. The black and the white are not equal before the law.

It appears from the statement of facts, that among the rules of the Primary School Committee, is one to this effect: "*Scholars to go to the school nearest their residence.* Applicants for admission to our schools (with the exception and provision referred to in the preceding rule) are especially entitled to enter the schools nearest to their places of residence." The exception here is "of those for whom special provision has been made" in separate schools; that is, colored children.

In this rule — without the exception — is seen a part of the beauty of our Public School system. It is the boast of England, that justice, through the multitude of courts, is brought to every man's door. It may also be the boast of our Public School system, that education in Boston, through the multitude of schools, is brought to every *white* man's door. But it is not brought to every black man's door. He is obliged to go for it — to travel for it — often a great distance. The facts in the present case are not so strong as those of other cases which have come to my knowledge. But here, the little child, only five years old, was compelled, if she went to the nearest African School, to go a distance of 2100 feet from her dwelling, while the nearest Primary School was only 900 feet, and, in doing this, she would pass near no less than five different Primary Schools, forming part of our Public Schools, and open to white children, all of which were closed to her. Surely this is not equality before the law.

This simple fact is sufficient to determine this case. If it be met by the suggestion, that the inconvenience is trivial, and such as the law will not notice, I reply, that it is precisely of that character which reveals distinctly an existing inequality, and, therefore, the law cannot fail to notice it. There is a maxim of the civilian, Dumoulin, which teaches that even a trivial fact may give occasion to an important application of the law. *Modica enim circumstantia facti inducit magnam juris diversitatem.* Also from the best examples of our history, we learn that the insignificance of a fact cannot obscure the grandeur of the principle at stake. It was a paltry tax on tea, laid by a Parliament in which they were not represented

that aroused our fathers to the struggles of the Revolution. They did not feel the inconvenience of the tax, but they felt its oppression. They went to war for a principle. Let it not be said, then, that the inconvenience is so slight in the present case as not to justify the appeal I now make, in behalf of the colored children, for Equality before the law.

I may go, however, beyond the facts of this case, and show that the inconvenience arising from the exclusion of colored children, is of such a character as seriously to affect the comfort and condition of the African race in Boston. The two primary schools open to these children are in Belknap street and in Sun court. I need not add that the whole city is dotted with schools open to white children. The colored parents, anxious that their children should have the benefit of education, are compelled to live in the neighborhood of the schools, to gather about them, as in the East people come from a distance to rest near a fountain or a well. They have not, practically, the same liberty of choosing their homes, which belongs to the white man. Inclination, or business, or economy, may call them to another part of the city; but they are restrained on account of their children. There is no such restraint upon the white man, for he knows that wherever in the city inclination, or business, or economy, may call him, he will find a school open to his children near his door. Surely this is not equality before the law.

Or if a colored person, yielding to the necessities of his position, removes to a distant part of the city, his children may be compelled, at an inconvenience which will not be called trivial, to walk a long distance in order to enjoy the advantages of the school. In our severe winters, this cannot be disregarded by children so tender in years as those of the primary schools. There is a respectable colored person, I am told, who became some time since a resident at East Boston, separated by the water from the main land. There are, of course, proper public schools at East Boston, but none that were then open to colored children. This person, therefore, was obliged to send his children, three in number, daily, across the ferry to the distant African school. The tolls for these children amounted to a sum which formed a severe tax upon a poor man.

This is the conduct of a colored parent. He is well deserving of honor for his generous efforts for his children. As they grow in knowledge, they will rise and call him blessed; but at the same time

they will brand as accursed the arbitrary discrimination of color, in the public schools of Boston, which rendered it necessary for their father, out of his small means, to make such sacrifices for their education.

Such a greivance, even independent of any stigma from color, calls for redress. It is an inequality which the Constitution and laws of Massachusetts repudiate. But it is not on the ground of inconvenience only that it is odious. And this brings me to the next point.

V. The separation of children in the Public Schools of Boston, on account of color or race, is in the nature of *Caste*, and is a violation of Equality.

The facts in this case show expressly that the child was excluded from the school nearest to her dwelling, the number in the school at the time warranting her admission, "on the sole ground of color." The first Majority Report presented to the School Committee, to which reference is made in the statement of facts, gives, with more fulness, the grounds of this discrimination, saying, "It is one of *races*, not of *color*, merely. The distinction is one which the Almighty has seen fit to establish, and it is founded deep in the physical, mental, and moral natures of the two races. No legislation, no social customs, can efface this distinction." Words more apt than these to describe the heathenish relation of Caste, could not be chosen.

This will be apparent from the very definition of Caste. This term is borrowed from the Portuguese word *casta*, which signifies family, breed, race. It has become generally used to designate any hereditary distinction, particularly of race. It is in India that it is most often applied; it is there that we must go in order to understand its full force. A recent English writer on the subject, says, that it is "not only a distinction by birth, but is founded on the doctrine of an essentially distinct origin of the different races, which are thus unalterably separated." (Roberts on Caste, p. 134.) This is the very ground of the Boston School Committee.

But this word is not now applied for the first time to the distinction between the white and black races. Alexander Humboldt, in speaking of the negroes in Mexico, has characterized them as a Caste, and a recent political and juridical writer of France, has used the same term to denote, not only the distinctions in India, but those of

our own country. (Charles Comte, *Traite de Legislation*, tom. 4, p. 445, 129.) In the course of his remarks he refers to the exclusion of colored children from the public schools, as among "the humiliating and brutal distinctions" by which their caste is characterized. It is, then, on authority and reason, that we apply this term to the hereditary distinction on account of color, which is established in the Public Schools of Boston.

It is when we see this discrimination in this light, that we learn to appreciate its true character. The Brahmins and the Sudras, in India, from generation to generation, were kept apart. If a Sudra presumed to sit upon a Brahmin's carpet, he was punished with banishment. It is with a similar inhumanity, that the black child who goes to sit on the same benches at school with the white child, is banished, not from the country, but from the school. In both cases it is the triumph of Caste. But the offence is greater with us, because, unlike the Hindoos, we acknowledge that men are born equal.

So strong is my desire that the Court should feel the enormity of this system, thus legalized, not by the legislature, but by an inferior local board, that I shall here introduce an array of witnesses to the unchristian character of Caste, as it appears in India, where it has been most studied and discussed. As you join in detestation of this foul institution, you will learn, perhaps, to condemn its establishment among children in our Public Schools.

I borrow these authorities from the work to which I have already referred, of Mr. Roberts, *Caste opposed to Christianity*, published in London, 1847.

Bishop Heber, of Calcutta, characterizes Caste as follows:

"*It is a system which tends, more than any else the devil has yet invented, to destroy the feelings of general benevolence, and to make nine tenths of mankind the hopeless slaves of the remainder.*"

Bishop Wilson, also of Calcutta, the successor of Heber, says:

"The Gospel recognizes no such distinctions as those of castes, imposed by a heathen usage, bearing in some respects a supposed religious obligation, condemning those in the lower ranks to perpetual abasement, placing an immovable barrier against all general advance and improvement in society, cutting asunder the bonds of human fellowship on the one hand, and preventing those of Christian love on the other. Such distinctions, I say, the Gospel does not recognize. On the contrary, it teaches us that God 'hath made of one blood all the nations of men.'"

Bishop Corrie, of Madras, says:

"Thus Caste sets itself up as a judge of our Saviour himself. His

command is, 'condescend to men of low estate. Esteem others better than yourself.' 'No,' says Caste, 'do not commune with low men; consider yourself of high estimation. Touch not, taste not, handle not.' Thus Caste condemns the Saviour."

Rev. Mr. Rhenius, a zealous and successful Missionary, says:

"I have found *Caste*, both in theory and practice, to be diametrically opposed to the Gospel, which inculcates love, humility, and union; whereas Caste teaches the contrary. It is a fact, in those entire congregations where Caste is allowed, the spirit of the Gospel does not enter; whereas in those from which it is excluded, we see the fruits of the Gospel spirit."

The Rev. C. Mault, also a Missionary, says:

"*Caste* must be entirely renounced; for it is a noxious plant, by the side of which the graces cannot grow; for facts demonstrate that where it has been allowed, Christianity has never flourished."

The Rev. John McKenny, a Wesleyan Missionary, says:

"I have been upwards of twelve years in India, and have directed much of my attention to the subject of *Caste*, and am fully of opinion that it is altogether contrary to the nature and principles of the Gospel of Christ, and therefore ought not to be admitted into the Christian Church."

The Rev. R. S. Hardy, a Wesleyan Missionary, and author of "Notices of the Holy Land," says:

"The principle of *Caste* I consider so much at variance with the spirit of the Gospel, as to render impossible, where its authority is acknowledged, the exercise of many of the most beautiful virtues of our holy religion."

Rev. D. J. Gogerly, of the same Society, says:

"I regard the distinction of *Caste*, both in its principles and operations, as directly opposed to vital godliness, and consequently inadmissible into the Church of Christ."

The Rev. W. Bridgnall, also of the same Society, says:

"I perfectly agree with a writer of respectable authority, in considering the institution of *Caste* as the most formidable engine that was ever invented for perpetuating the subjugation of men; so that, as a friend of humanity only, I should feel myself bound to protest against and oppose it; but in particular as a Christian, I deem it my obvious and imperative duty wholly to discountenance it, conceiving it to be utterly repugnant to all the principles and the whole spirit of Christianity. He who is prepared to support the system of Caste, is, in my judgment, neither a true friend of man, nor a consistent follower of Christ."

The Rev. S. Allen, of the same Society, says:

"During a residence of more than nine years in Ceylon, I have had many opportunities of witnessing the influence of *Caste* on the minds of the natives; and I firmly believe it is altogether opposed to the spirit

of Christianity; and it appears to me that its utter and speedy extinction cannot but be desired by every minister of Christ."

The Rev. R. Stoup, of the same Society, says:

"From my own personal observation, during a four years' residence in Ceylon, I am decidedly of opinion that *Caste* is directly opposed to the spirit of Christianity, and, consequently, ought to be discouraged in every possible way."

The Rev. Joseph Roberts, author of the work on Caste, says:

"*We must, in every place, witness against it, and show that even government itself is nurturing a tremendous evil, that through its Heathen managers it is beguiled into a course which obstructs the progress of civilization*, which keeps in repulsion our kindlier feelings, which creates and nurses distinctions the most alien to all the cordialities of life; and which, more than any other thing, makes the distance so immense betwixt the governed and governors."

This is the testimony of a native of Hindostan, converted to Christianity:

"Caste is the stronghold of that principle of pride which makes a man think of himself more highly than he ought to think. Caste infuses itself into, and forms the very essence of pride itself."

Another native speaks as follows:

"I therefore regard Caste as opposed to the main scope, principles, and doctrines of Christianity; for, either Caste must be admitted to be true and of divine authority, or Christianity must be so admitted. If you admit Caste to be true, the whole fabric of Christianity must come down; for the nature of Caste and its associations destroy the first principles of Christianity. Caste makes distinctions among creatures where God has made none."

Another native expresses himself as follows:

"When God made man, his intention was not that they should be divided, and hate one another, and show contempt, and think more highly of themselves than others. Caste makes a man think that he is holier than another, and that he has some inherent virtue which another has not. It makes him despise all those that are lower than himself, in regard to Caste, which is not the design of God."

Another native uses this language:

"Yes, we regard Caste as part and parcel of idolatry, and of all heathen abominations, because it is in many ways contrary to God's word, and directly contrary to God himself."

In the words of these competent witnesses may be read, as in a mirror, the true character of the discrimination of color, which I now arraign before this Court.

It will be vain to say that this distinction, though seeming to be founded on color, is in reality founded on natural and physical peculiarities, which are independent of color. These peculiarities, whatever

they may be, are peculiarities of race, and any discrimination on account of them constitutes the relation of Caste. Disguise it as you will, it is this hateful institution. But the words Caste and Equality are contradictory. They mutually exclude each other. Where Caste is, there cannot be Equality. Where Equality is, there cannot be Caste.

It is unquestionably true that there is a distinction between the Ethiopian and Caucasian races. Each has received from the hand of God certain characteristics of color and form. The two may not readily intermingle, although we are told by Homer that Jupiter

> —— "did not disdain to grace
> The feast of Ethiopia's blameless race."

One may be uninteresting or offensive to the other, precisely as different individuals of the same race and color may be uninteresting or offensive to each other. *But this distinction can furnish no ground for any discrimination before the law.*

We abjure nobility of all kinds ; but here is a nobility of the skin. We abjure all hereditary distinctions; but here is an hereditary distinction, founded not on the merit of the ancestor, but on his color. We abjure all privileges derived from birth ; but here is a privilege which depends solely on the accident, whether an ancestor is black or white. We abjure all inequality before the law; but here is an inequality which touches not an individual, but a race. We revolt at the relation of caste ; but here is a caste which is established under a Constitution, declaring that all men are born equal.

Condemning caste and inequality before the law, let us now consider more particularly the powers of the School Committee. Here it will be necessary to enter into some details.

VI. The Committee of Boston, charged with the superintendence of the Public Schools, have no *power* under the Constitution and laws of Massachusetts, to make any discrimination on account of color or race, among children in the Public Schools.

It has been already seen that this power is inconsistent with the Constitution and laws of Massachusetts, and with the adjudications of the Supreme Court. The stream cannot rise higher than the fountain-head, and if there be nothing in these elevated sources, from which this power can draw its sanction, it must be considered a nullity. Having already seen that there is nothing, I might here

stop. But I wish to show the shallow origin to which this power has been traced.

Its advocates, unable to find it among the express powers conferred upon the School Committee, and forgetful of the Constitution, where "either it must live, or bear no life," place it among the implied or incidental powers. Let us consider this. The Revised Statutes (cap. 23, § 10) provide for the appointment of a School Committee "who shall have a *general charge and superintendence* of all the Public Schools" in their respective towns. Another section (§ 15) provides that the "Committee shall determine the number and qualifications of the scholars to be admitted into the school kept for the use of the whole town." These are all the clauses conferring powers on the Committee.

Surely from these no person will be so rash as to imply a power to defeat a cardinal principle of the Constitution. It is absurd to suppose that the Committee, in their general charge and superintendence of the schools, and in determining the number and qualifications of the scholars, may ingraft upon the schools a principle of inequality, unknown to the Constitution and laws, and in defiance of their spirit and letter. In the exercise of the general charge and superintendence, they cannot put colored children to personal inconvenience in attending school, greater than that of white children. Still further, they cannot brand a whole race with the stigma of inferiority and degradation, constituting them into a *caste*. They cannot in any way violate that fundamental right of all citizens, Equality before the law. To suppose that they can do this, would place the Committee above the Constitution. It would enable them, in the exercise of a brief and local authority, to draw a fatal circle, within which the Constitution cannot enter; nay, where the very Bill of Rights shall become a dead letter.

But the law, in entire harmony with the Constitution, says expressly what the Committee shall do. Besides having the general charge and superintendence, they shall "determine the *number* and the *qualifications* of the scholars to be admitted into the school;" thus, according to a familiar rule of interpretation, excluding other powers. *Mentio unius est exclusio alterius.* The power to determine the *number* is easily executed, and admits of no question. The power to determine the *qualifications*, though less simple, must be restrained

to the qualifications of age, sex, and moral and intellectual fitness. The fact that a child is black, or that he is white, cannot of itself be considered a qualification, or a disqualification. It is not to the skin that we can look for the criterion of fitness for our Public Schools.

But it is said that the Committee are intrusted with a discretion, in the exercise of their power, and that, in this discretion, they may distribute, assign, and classify all children belonging to the schools of the city, *according to their best judgment*, making, if they think proper, a discrimination of color or race. Without questioning that they are intrusted with a discretion, it is outrageous to suppose that it can go to this extent. The Committee can have no discretion which is not in harmony with the Constitution and laws. Surely, they cannot, in their mere discretion, nullify a sacred and dear-bought principle of Human Rights, which is expressly guaranteed by the Constitution.

Still further, — and here I approach a more technical view of the subject, — it is an admitted principle, that the regulations and by-laws of municipal corporations must be *reasonable*, or they are inoperative and void. This has been recognized by this court in *Commonwealth* vs. *Worcester*, (4 Pick. R. 462,) and in *Vardine's Case*, (6 Pick. 187.) And in the *City of Boston* vs. *Jesse Shaw*, (1 Met. 130,) it was decided that a by-law of the city of Boston, prescribing a particular form of contribution towards the expenses of making the common sewers, was void for inequality and unreasonableness.

Assuming that this principle is applicable to the School Committee, their regulations and by-laws must be *reasonable*. Their discretion must be exercised in a reasonable manner. And this is not what the Committee, or any other body of men, may think reasonable, but what shall be reasonable in the eye of the law. It must be *legally reasonable*. It must be approved by the *reason* of the law.

And here we are brought once more, in another form, to the question of the validity of the discrimination on account of color by the School Committee of Boston. Is this *legally reasonable?* Is it reasonable, in the exercise of their discretion, to separate the descendants of the African race from the white children, in consequence of their descent merely? Passing over now those principles of the Constitution, and those provisions of the law, which of themselves would decide the question, constituting as they do *the highest reason*, but

which have been already amply considered, look for a moment at the Educational system of Massachusetts, and it will be seen that practically no discrimination of color is made by law in any part of it. A descendant of the African race may be Governor of the Commonwealth, and as such, with the advice and consent of the Council, may select the *Board of Education*. As Lieutenant Governor, he may be, *ex officio*, a member of the Board. He may be the *Secretary* of the Board, with the duty imposed on him by law of seeing "that *all* children in this Commonwealth, who depend upon common schools for instruction, may have the best education which those schools can be made to impart." He may be a member of any School Committee, or a teacher in any public school of the State. As a legal voter, he can vote in the selection of any School Committee.

Thus, in every department connected with our Public Schools, throughout the whole hierarchy of their government, from the very head of the system down to the humblest usher in the humblest primary school, and, to the humblest voter, there is no distinction of color known to the law. It is when we reach the last stage of all, the children themselves, that the beautiful character of the system is changed to the deformity of Caste; as, in the picture of the ancient poet, what was a lovely woman above terminated in a vile, unsightly fish below. And all this is done by the Committee, with more than necromantic power, in the exercise of their mere discretion.

It is clear that the Committee may classify scholars, according to their age and sex; for the obvious reasons that these distinctions are inoffensive, and especially recognized as *legal* in the law relating to schools. (Revised Statutes, c. 23, § 63.) They may also classify scholars according to their moral and intellectual qualifications, because such a power is necessary to the government of schools. But the Committee cannot assume, *a priori*, and without individual examination, that an *entire race* possess certain moral or intellectual qualities, which shall render it proper to place them all in a class by themselves. Such an exercise of the discretion with which the Committee are intrusted, must be unreasonable, and therefore illegal.

But it is said that the Committee, in thus classifying the children, have not violated any principle of Equality, inasmuch as they have provided a school with competent instructors for the colored children, where they have equal advantages of instruction with those enjoyed

by the white children. It is said that in excluding the colored children from the Public Schools open to white children, they furnish them an equivalent.

To this there are several answers. I shall touch upon them only briefly, as the discussion, through which we have now travelled, substantially covers the whole ground.

1st. The separate school for colored children is not one of the schools established by the law relating to Public Schools. (Revised Statutes, chap. 23.) It is not a Public School. As such, it has no legal existence, and, therefore cannot be a legal equivalent. In addition to what has already been said bearing on this head, I will call the attention to one other aspect of it. We have already seen that it has been decided, that a town can execute its power to form a School District only by a geographical division of its territory — that there cannot be, what the Court have called a *personal* limitation of the District, and that *certain individuals* cannot be selected and set off by *themselves* into a District. (*Perry* v. *Dover*, 12 Pick. 213.) The admitted effect of these decisions is to render a separate school for colored children illegal and impossible in towns that have been divided into Districts. They are so regarded in Salem, Nantucket, New Bedford, and in other towns of this Commonwealth. The careful opinion of a member of this Court, who is not sitting in this case, given while at the bar, (Hon. Richard Fletcher,) and extensively published, has been considered as practically settling this point.

But there cannot be one law for the country, and one for Boston. It is true that Boston is not divided strictly into geographical districts. In this respect its position is anomalous. But if separate colored shools are illegal and impossible in the country, they must be illegal and impossible in Boston. It is absurd to suppose that this city, by failing to establish school Districts, and by regarding all its territory as a single district, should be able legally to establish a *Caste* school, which it otherwise could not do. Boston cannot do indirectly what the other towns cannot do directly.

This is the first answer to the suggestion of equivalents.

2d. The second is, that, in point of fact, it is not an equivalent. We have already seen that it is the occasion of inconveniences to the colored children and their parents, to which they would not be exposed, if they had access to the nearest public schools, besides inflicting upon them the stigma of Caste. Still further, and this consideration

cannot be neglected, the matters taught in the two schools may be precisely the same; but a school, exclusively devoted to one class, must differ essentially, in its spirit and character, from that public school known to the law, where all classes meet together in equality. It is a mockery to call it an equivalent.

3d. But there is yet another answer. Admitting that it is an equivalent, still the colored children cannot be compelled to take it. Their rights are Equality before the law; nor can they be called upon to renounce one jot of this. They have an equal right with white children to the general public schools. A separate school, though well endowed, would not secure to them that precise Equality, which they would enjoy in the general public schools. The Jews in Rome are confined to a particular district, called the Ghetto. In Frankfort they are condemned to a separate quarter, known as the Jewish quarter. It is possible that the accommodations allotted to them are as good as they would be able to occupy, if left free to choose throughout Rome and Frankfort; but this compulsory segregation from the mass of citizens is of itself an *inequality* which we condemn with our whole souls. It is a vestige of ancient intolerance directed against a despised people. It is of the same character with the separate schools in Boston.

Thus much for the doctrine of equivalents, as a substitute for equality.

In determining that the Committee have no *power* to make a discrimination of color or race, we are strengthened by yet another consideration. If the power exists in the present case, it must exist in many others. It cannot be restrained to this alone. The Committee may distribute all the children into classes — merely according to their discretion. They may establish a separate school for the Irish or the Germans, where each may nurse an exclusive spirit of nationality alien to our institutions. They may separate Catholics from Protestants, or, pursuing their discretion still further, they may separate the different sects of Protestants, and establish one school for Unitarians, another for Presbyterians, another for Baptists, and another for Methodists. They may establish a separate school for the rich, that the delicate taste of this favored class may not be offended by the humble garments of the poor. They may exclude the children of mechanics from the Public Schools, and send them to separate schools by themselves. All this, and much more, can be

done by the exercise of the high-handed power which can make a discrimination on account of color or race. The grand fabric of our Public Schools, the pride of Massachusetts — where, at the feet of the teacher, innocent childhood should meet, unconscious of all distinctions of birth — where the Equality of the Constitution and of Christianity should be inculcated by constant precept and example — may be converted into a heathen system of proscription and Caste. We may then have many different schools, the representatives of as many different classes, opinions, and prejudices; but we shall look in vain for the true Public School of Massachusetts. Let it not be said that there is little danger that any Committee will exercise their discretion to this extent. They must not be entrusted with the power. In this is the only safety worthy of a free people.

VII. The Court will declare the by-law of the School Committee of Boston, making a discrimination of color among children of the Public Schools, to be unconstitutional and illegal, although there are no express words of prohibition in the constitution and laws.

It is hardly necessary to say any thing in support of this proposition. Slavery was abolished in Massachusetts, by virtue of the declaration of rights in our constitution, without any specific words of abolition in that instrument, or in any subsequent legislation. (*Commonwealth* vs. *Aves*, 18 Pick. R. 210.) The same words which are potent to destroy slavery, must be equally potent against any institution founded on inequality or *caste*. The case of *Boston* vs. *Shaw*, (1 Metcalf 130,) to which reference has been already made, where a by-law of the city was set aside as unequal and unreasonable, and therefore void, affords another example of the power which I now invoke the Court to exercise. But authorites are not needed. The words of the Constitution are plain, and it will be the duty of the Court to see that these are applied to the discrimination of color now in question.

In doing this, the Court might justly feel great delicacy, if they were called upon to revise a *law* of the legislature. But it is simply the action of a local committee that they are to overrule. They may also be encouraged by the fact, that it is only to the Schools of Boston that their decision can be applicable. The other towns throughout the Commonwealth have already voluntarily banished Caste. In removing it from the schools of Boston, the Court will bring them into much-desired harmony with the schools of other

towns, and with the whole system of Public Schools in Massachusetts. I am unwilling to suppose that there can be any hesitation or doubt in coming to this conclusion. But if any should arise, there is a rule of interpretation which may be our guide. It is according to familiar practice that every interpretation is made always in favor of life or liberty. So here, the Court should incline in favor of Equality, that sacred right which is the companion of these other rights. In proportion to the importance of this right will the Court be solicitous to vindicate it and uphold it. And in proportion to the opposition which it encounters from the prejudices of society, will the Court brace themselves to this task. It has been pointedly remarked by Rousseau that "it is precisely because the force of things tends always to destroy Equality, that the force of legislation ought always to tend to maintain it." (*Contrat Social*, *liv.* 2, *chap.* 11.) In a similar spirit, and for the same reason, the Court should always tend to maintain it.

There are some other matters not strictly belonging to the juridical aspect of the case, and yet of importance to its clear comprehension, upon which I shall touch briefly before I close.

It is sometimes said in extenuation of the present system in Boston, that the separation of the white and black children was originally made at the request of the colored parents. This is substantially true. It appears from the interesting letter of Dr. Belknap, in reply to Judge Tucker's queries respecting slavery in Massachusetts, written at the close of the last century, (4 Mass. Hist. Coll. 207,) that at that time no discrimination on account of color was made in the public schools of Boston. "The same provision," he says, "is made by the public for the education of the children of the blacks, as for those of the whites. In this town, the Committee who superintend the free schools, have given in charge to the schoolmasters to receive and instruct black children as well as white." Dr. Belknap adds, however, that he has not heard of more than three or four who have taken advantage of this privilege, though the number of blacks in Boston probably exceeded one thousand. It is to be feared that the inhuman bigotry of Caste — sad relic of the servitude from which they had just escaped! — was at this time too strong to allow colored children a kindly welcome in the free schools, and that from timidity and ignorance, they shrank from taking their places on the same benches with the white children. Perhaps the prejudice against them was

so inveterate that they could not venture to assert their rights. It appears that in 1800, a petition was presented to the School Committee from sixty-six colored persons, praying for the establishment of a school for their benefit. Private munificence came to the aid of the city, and the present system of separate schools was brought into being.

These facts are interesting in the history of the Boston Schools, but they cannot in any way affect the rights of the colored people, or the powers of the Committee. These rights and these powers stand on the Constitution and laws of the Commonwealth. Without adopting the suggestion of Jefferson, that one generation cannot by legislation bind its successors, all must agree that the assent of a few persons, nearly half a century ago — at a time when their rights were imperfectly understood — to an unconstitutional and illegal course, cannot alter the Constitution and the laws, and bind their descendants forever in the thrall of Caste. Nor can the Committee derive from this assent, or from any lapse of time, powers in derogation of the Constitution and of the Rights of Man.

It is clear that the sentiments of the colored people have now changed. The present case, and the deep interest which they manifest in it, thronging the court to hang on this discussion, attest the change. With increasing knowledge, they have learned to know their rights, and to feel the degradation to which they have been doomed. Their present effort is the token of a manly character which this court will cherish and respect. The spirit of Paul now revives in them, even as when he said, "I am a Roman citizen."

But it is said that these separate schools are for the mutual benefit of children of both colors, and of the Public Schools. In similar spirit, slavery is sometimes said to be for the mutual benefit of master and slave, and of the country where it exists. In one case there is a mistake as great as in the other. This is clear. Nothing unjust, nothing ungenerous can be for the benefit of any person, or any thing. Shortsighted mortals may hope to draw from some seeming selfish superiority, or from a gratified vanity of class, a permanent good; but even-handed justice rebukes these efforts, and with certain power redresses the wrong. The whites themselves are injured by the separation. Who can doubt this? With the law as their monitor, they are taught to regard a portion of the human family, children of God, created in his image, co-equals in his love, as a separate and degraded class — they are taught practically to deny that grand revelation of Christianity — the Brotherhood of Mankind. Their hearts,

while yet tender with childhood, are necessarily hardened by this conduct, and their subsequent lives, perhaps, bear enduring testimony to this legalized uncharitableness. Nursed in the sentiment of Caste, receiving it with the earliest food of knowledge, they are unable to eradicate it from their natures, and then weakly and impiously charge upon their Heavenly Father the prejudice which they have derived from an unchristian school, and which they continue to embody and perpetuate in their institutions. Their characters are debased, and they become less fit for the magnanimous duties of a good citizen.

The Helots of Sparta were obliged to intoxicate themselves, that they might teach to the children of their masters the deformity of intemperance. In thus sacrificing one class to the other, both were degraded — the imperious Spartan and the abased Helot. But it is with a similar double-edged injustice that the School Committee of Boston have acted, in sacrificing the colored children to the prejudice or fancied advantage of the white.

It is fit that a child should be taught to shun wickedness, and, as he is yet plastic to receive impressions, to shun wicked men. Horace was right, when, speaking of a person morally wrong, false and unjust, he called him black, saying,

——hic niger est, hunc tu, Romane, caveto.

The Boston Committee adopt the warning, but apply it, not to those black in heart, but only black in skin. They forget the admonition addressed to the prophet: "But the Lord said unto Samuel, *look not on his countenance*, for the Lord seeth not as man seeth: for man looketh at the outward appearance, *but the Lord looketh at the heart.*" (1 Samuel, chap 16, v. 7.)

Who can say, that this does not injure the blacks? Theirs, in its best estate, is an unhappy lot. Shut out by a still lingering prejudice from many social advantages, a despised class, they feel this proscription from the Public Schools as a peculiar brand. Beyond this, it deprives them of those healthful animating influences which would come from a participation in the studies of their white brethren. It adds to their discouragements. It widens their separation from the rest of the community, and postpones that great day of reconciliation which is sure to come.

The whole system of public schools suffers also. It is a narrow perception of their high aim which teaches that they are merely to furnish to all the scholars an equal amount in knowledge, and that, therefore,

provided all be taught, it is of little consequence where, and in what company it be done. The law contemplates not only that they shall all be taught, but that they shall be taught *all together*. They are not only to receive equal quantities of knowledge, but all are to receive it in the same way. All are to approach together the same common fountain ; nor can there be any exclusive source for any individual or any class. The school is the little world in which the child is trained for the larger world of life. It must, therefore, cherish and develop the virtues and the sympathies which are employed in the larger world. And since, according to our institutions, all classes meet, without distinction of color, in the performance of civil duties, so should they all meet, without distinction of color, in the school, beginning there those relations of equality which our Constitution and laws promise to all.

As the State receives strength from the unity and solidarity of its citizens, without distinction of class, so the school receives new strength from the unity and solidarity of all classes beneath its roof. In this way, the poor, the humble, and the neglected, share not only the companionship of their more favored brethren, but enjoy also the protection of their presence, in drawing towards the school a more watchful superintendence. A degraded or neglected class, if left to themselves, will become more degraded or neglected. To him that hath shall be given; and the world, true to these words, turns from the poor and outcast to the rich and fortunate. It is the aim of our system of Public Schools, by the blending of all classes, to draw upon the whole school the attention which is too apt to be given only to the favored few, and thus secure to the poor their portion of the fruitful sunshine. But the colored children, placed apart by themselves, are deprived of this blessing.

Nothing is more clear than that the welfare of classes, as well as of individuals, is promoted by mutual acquaintance. The French and English, for a long time regarded as natural enemies, have at last, from a more intimate communion, found themselves to be natural friends. Prejudice is the child of ignorance. It is sure to prevail where people do not know each other. Society and intercourse are means established by Providence for human improvement. They remove antipathies, promote mutual adaptation and conciliation, and establish relations of reciprocal regard. Whoso sets up barriers to these, thwarts the ways of Providence, crosses the tendencies of human nature, and directly interferes with the laws of God.

May it please your Honors: Such are some of the things which it has occurred to me to say in this important cause. I have occupied much of your time, but I have not yet exhausted the topics. Still, which way soever we turn, we are brought back to one single proposition —*the equality of men before the law.* This stands as the mighty guardian of the rights of the colored children in this case. It is the constant, ever-present, tutelary genius of this Commonwealth, frowning upon every privilege of birth, upon every distinction of race, upon every institution of Caste. You cannot slight it, or avoid it. You cannot restrain it. It remains that you should welcome it. Do this, and your words will be a "charter and freehold of rejoicing" to a race which has earned by much suffering a title to much regard. Your judgment will become a sacred landmark, not in jurisprudence only, but in the history of Freedom, giving precious encouragement to all the weary and heavy-laden wayfarers in this great cause. Massachusetts will then, through you, have a fresh title to regard, and be once more, as in times past, an example to the whole land.

You have already banished slavery from this Commonwealth. I call upon you now to obliterate the last of its footprints, and to banish the last of the hateful spirits in its train, that can be reached by this Court. The law interfering to prohibit marriages between blacks and whites, has been abolished by the Legislature. The railroads, which, imitating the Boston schools, placed colored people in a car by themselves, have been compelled, under the influence of an awakened public sentiment, to abandon this regulation, and to allow them to mingle with other travellers. It is only recently that I have read that his Excellency the present Governor of Massachusetts, took his seat in a car by the side of a negro. It is in the Caste schools of Boston that the prejudice of color has sought its final legal refuge. It is for you to drive it forth. You do well when you rebuke and correct individual offences; but it is a higher office far to rebuke and correct a vicious institution. Each individual is limited in his influence; but an institution has the influence of numbers organized by law. The charity of one man may counteract or remedy the uncharitableness of another, but no individual can counteract or remedy the uncharitableness of an established institution. Against it private benevolence is powerless. It is a monster which must be hunted down by the public, and by its constituted authorities. And such is the institution of Caste in the Public Schools of Boston, which now awaits its just condemnation from a just Court.

The civilization of the age joins in this appeal. It is well known that this prejudice of color is peculiar to our country. You have not forgotten that two youths of African blood only recently gained the highest honors in the college at Paris, and dined on the same day with the king of France, the descendant of St. Louis, at the palace of the Tuileries. And let me add, if I may refer to my own experience, that in Paris, I have sat for weeks, at the School of Law, on the same benches with colored persons, listening, like myself, to the learned lectures of Degerando and of Rossi — the last is the eminent minister who has unhappily fallen beneath the dagger of a Roman assassin; nor do I remember observing in the throng of sensitive young men by whom they were surrounded, any feeling towards them except of companionship and respect. In Italy, at the Convent of Pallazuola, on the shores of the Alban Lake, and on the site of the ancient Alba Longa, I have seen, for several days, a native of Abyssinia, only recently conducted from his torrid home, and ignorant of the language that was spoken about him, yet mingling with the Franciscan friars, whose guest and scholar he was, in delightful and affectionate familiarity. In these examples may be discerned the Christian spirit.

And, finally, it is this spirit that I invoke. Where this prevails, there is neither Jew nor Gentile, Greek nor barbarian, bond nor free; but all are alike. It is from this that we derive new and solemn assurances of the equality of mankind, as an ordinance of God. The bodies of men may be unequal in beauty or strength; these mortal cloaks of flesh may differ, as do these worldly garments; these intellectual faculties may vary, as do the opportunities of action and the advantages of position; but amidst all unessential differences there is an essential agreement and equality. Dives and Lazarus were equal in the sight of God. They must be equal in the sight of all just institutions.

But this is not all. The vaunted superiority of the white race imposes upon it corresponding duties. The faculties with which they are endowed, and the advantages which they possess, are to be exercised for the good of all. If the colored people are ignorant, degraded, and unhappy, then should they be the especial objects of your care. From the abundance of your possessions you must seek to remedy their lot. And this Court, which is as a parent to all the unfortunate children of the Commonwealth, will show itself most truly parental, when it reaches down, and, with the strong arm of the law, elevates, encourages, and protects its colored fellow-citizens.